

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 22, 2014 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that on July 14, 2014 she first became aware of radiating and piercing pain stemming from her right shoulder down her entire right arm. She further alleged that on November 25, 2014 she first realized that her condition was caused or aggravated by her federal employment.³ Appellant claimed that casing mail several hours a day and carrying mail on her right shoulder for over 25 years added to the deterioration of her right shoulder condition. She stopped work on December 3, 2014.

In a December 22, 2014 letter, appellant related that in addition to casing mail several hours a day, she was also required to lift up to 70 pounds. She noted that Dr. Robert Henry, an internist, referred her to physical therapy for three weeks. Appellant was later referred to Dr. David B. Cohen, a Board-certified orthopedic surgeon, who diagnosed a rotator cuff condition as confirmed by a December 3, 2014 magnetic resonance imaging (MRI) scan. Dr. Cohen opined that this condition was the primary cause of appellant's pain. Appellant maintained that her job duties were the reason for her increasing pain.

Appellant submitted an October 13, 2014 report from her physical therapist who addressed the treatment of appellant's right upper extremity pain.

In a November 25, 2014 medical report, Dr. Cohen noted appellant's complaint of right shoulder pain that had progressively increased over the last three months and worsened while she was reaching and carrying things at work and sleeping. Appellant's pain was sharp, throbbing, severe, constant, and worse with any overhead activity. She attempted physical therapy with minimal improvement in her condition and required prescription medication at night. Dr. Cohen reported findings on physical and x-ray examination. He provided an impression of persistent right shoulder pain that was nonresponsive to conservative measures. Dr. Cohen recommended a repeat MRI scan to rule out a rotator cuff condition.

In a December 3, 2014 right shoulder MRI scan report, Dr. Joseph A. Gagliardi, a Board-certified internist, provided an impression of scattered mild degenerative change with rotator cuff tendinopathy without evidence of a full-thickness tear. In an addendum note, he reported that high signal intensity in the distal supraspinatus tendon on a single coronal oblique image appeared to involve a segment of greater than 50 percent thickness which could represent a near complete focus of a full-thickness tear.

On December 9, 2014 Dr. Cohen reported that appellant continued to experience severe right shoulder pain. He noted that she attributed her progressively increasing pain to her mail carrier job requirements which involved constant reaching and lifting. Dr. Cohen provided findings on physical examination and reviewed a right shoulder MRI scan which demonstrated a high-grade, partial-thickness cuff tear that went 75 percent through the tendon. Based on appellant's severe degree of pain that had persisted despite efforts at conservative management,

³ Appellant noted that she had previously filed a claim under File No. xxxxxx700 for a right shoulder injury sustained on May 18, 1988 as a result of a motor vehicle accident while in the performance of her letter carrier duties. This prior claim is not before the Board on the present appeal.

he recommended arthroscopic rotator cuff repair and subacromial decompression. In a December 13, 2014 duty status report (Form CA-17), Dr. Cohen noted a clinical finding of shoulder pain. He advised that appellant could work four hours a day with certain restrictions, which included only delivering mail using her body weight and not her arms for two hours, and casing mail with no lifting above her waist for the same time period.

By letter dated February 3, 2015, OWCP advised appellant of the deficiencies of her claim and requested that she submit medical evidence including a detailed narrative report from her physician which included a history of the injury and a medical explanation with objective evidence of how the reported work activities caused, contributed to, or aggravated the claimed condition. Appellant was afforded 30 days to submit the requested evidence.

In a March 16, 2015 decision, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record did not contain a physician's rationalized opinion, supported by a medical explanation, as to how and why the established employment factors caused, contributed to, or aggravated her right shoulder condition. OWCP noted that appellant did not respond to the February 3, 2015 development letter.

In a report dated December 23, 2014, received by OWCP on March 23, 2015, Dr. Cohen noted seeing appellant for follow-up of her right shoulder full-thickness rotator cuff tear. He further noted that appellant continued to try to work as a mail carrier, but she was quite limited by pain. Appellant's lateral elbow pain was mild and somewhat improved after receiving an injection. Dr. Cohen reported findings on examination and recommended that she continue to work with restrictions as tolerated. He noted that appellant was scheduled to undergo surgery at the end of January 2015. On January 20, 2015 Dr. Cohen advised that appellant had a preoperative evaluation for her right shoulder surgery to repair her traumatic rotator cuff tear. He noted that she would be out of work following surgery. In a February 13, 2015 progress note, Dr. Cohen noted seeing appellant for follow-up of her right shoulder traumatic rotator cuff tear. He advised that she was doing well 10 days status post arthroscopic right shoulder surgery as her moderate pain was under control with narcotic pain medication. Dr. Cohen reported findings on physical and x-ray examination. He provided a diagnosis of work-related injury and traumatic rotator cuff tear.

On March 13, 2015 Dr. Cohen noted appellant's complaints of right shoulder pain, provided findings, and restated his diagnosis of traumatic right shoulder rotator cuff tear. He indicated that appellant underwent surgery on January 30, 2015 to repair her right shoulder rotator cuff tear with impingement. Dr. Cohen advised that appellant would be off work approximately four months and then she could return to restricted duty. He further advised that she would not be able to return to full duty until six to eight months after her surgery. Dr. Cohen concluded that he believed repetitive reaching and lifting at work caused the rotator cuff tear. In a May 8, 2015 work status form report, he indicated with a checkmark that the causative event of appellant's injury was work related. Dr. Cohen also indicated by checking a box marked "Yes" indicating that she was temporarily totally disabled.

On June 4, 2015 appellant requested reconsideration of the March 16, 2015 decision. She submitted an April 10, 2015 progress note from Dr. Cohen who had seen her for follow-up of her right shoulder rotator cuff repair. Dr. Cohen listed examination findings and restated his

assessment of a work-related injury of an unspecified site and traumatic right rotator cuff tear. He related that it appeared appellant's overall upper extremity complaints were causally related to her work duties given that the onset of her shoulder, elbow, and hand issues were associated with pushing a cart and repetitive lifting. Dr. Cohen noted that there was no injury to her shoulder or upper extremity outside of her work duties. He concluded, therefore, that there was a causal relationship between appellant's injury and work duties. In a June 9, 2015 work status report, Dr. Cohen again indicated with a checkmark that the causative event of appellant's injury was work related. He noted her physical restrictions.

By decision dated July 22, 2015, OWCP denied modification of the March 16, 2015 decision. It found that Dr. Cohen's reports were not sufficiently rationalized to establish that appellant's right shoulder condition was causally related to the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

It is undisputed that appellant performed the work duties of a mail carrier, which involved casing mail and heavy lifting. The Board finds, however, that the medical evidence of

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

record is insufficient to establish a right shoulder condition caused or aggravated by the accepted work factors.

Appellant submitted several reports from Dr. Cohen. In a March 13, 2015 report, Dr. Cohen noted appellant's January 30, 2015 surgery to repair her right shoulder rotator cuff tear with impingement and addressed her work capacity. He related that he believed repetitive reaching and lifting at work caused the rotator cuff tear. Although Dr. Cohen found that appellant was injured at work, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between her right shoulder condition, resultant surgery, and disability and the established employment factors.⁷ Therefore, this evidence is insufficient to meet appellant's burden of proof.

In his April 10, 2015 progress note, Dr. Cohen provided examination findings and diagnosed traumatic right rotator cuff tear and a work-related injury of an unspecified site. He opined that appellant's overall upper extremity complaints "appeared" to be causally related to her work duties, which included pushing a cart and repetitive lifting, as she did not have a shoulder or upper extremity injury outside of her work duties. Dr. Cohen's opinion, however, is vague and speculative in nature and, thus, of little probative value.⁸ Moreover, an opinion that a condition is causally related to employment because the employee was asymptomatic before the work factors is insufficient, without supporting rationale, to establish causal relationship.⁹ Dr. Cohen did not explain how appellant's traumatic right rotator cuff tear was caused by her work duties.

The Board therefore finds that Dr. Cohen's report is of limited probative value and insufficient to meet appellant's burden of proof.

Dr. Cohen's May 8 and June 9, 2015 work status reports failed to provide a firm diagnosis of a particular medical condition¹⁰ or provide a history of injury.¹¹ Moreover, his opinion contained in these reports that appellant's injury was caused by a work-related event consists solely of a checkmark to a medical form question. Dr. Cohen did not address how casing mail and heavy lifting would cause or contribute to appellant's injury. The Board has

⁷ See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁸ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

⁹ *T.M.*, *supra* note 7; *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ See *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

¹¹ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

held that a checkmark or affirmative notation in response to a form question on causal relationship is insufficient, without medical rationale, to establish causal relationship.¹²

Dr. Cohen's remaining reports and progress notes addressed appellant's right shoulder pain and rotator cuff tear, January 30, 2015 right shoulder surgery, work capacity, and restrictions, but failed to offer a medical opinion addressing whether the diagnosed condition and resultant surgery and disability were causally related to the established employment factors. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³

Similarly, Dr. Gagliardi's December 3, 2014 diagnostic test results and addendum note are of diminished probative value regarding causal relationship. Although he diagnosed right shoulder rotator cuff tear, he did not provide any opinion on the cause of appellant's diagnosed condition.¹⁴

The October 13, 2014 report from appellant's physical therapist has no probative medical value as physical therapists are not considered physicians as defined under FECA.¹⁵ As such, this evidence is also insufficient to meet appellant's burden of proof.

Appellant's belief that factors of her federal employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.¹⁶ The issue of causal relationship is a medical one and must be resolved by probative medical opinion evidence from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's right shoulder condition was caused or aggravated by the established employment factors. Appellant, therefore, did not meet her burden of proof.

On appeal, counsel cites Board precedent and contends that the medical evidence of record is sufficient to establish appellant's claim. He also disputes OWCP's arbitrary reliance on *Barbara J. Williams*, 40 ECAB 649 (1989) in denying the claim. However, for the reasons set forth above, the Board finds that the weight of the medical evidence does not establish that appellant sustained a right shoulder condition causally related to the accepted employment duties.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹² *K.T.*, Docket No. 15-1758 (issued May 24, 2016).

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹⁶ 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish a right shoulder condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board